BADAN PEGUAM MALAYSIA & ORS
v. NOOR DELLHAN YAHAYA
(SELAKU PEGAWAI YANG MENJAGA DAERAH POLIS DANG WANGI) & ORS

HIGH COURT MALAYA, KUALA LUMPUR
GAN TECHIONG JC
[SUIT NO: WA-21NCVC-113-10-2022]
20 MARCH 2025

Abstract – *(i) An assembly notification, under the Peaceful Assembly Act 2012 ('PAA'), is valid only if it fully complies with the requirements of s. 10 of the PAA. Section 10(c) of the PAA mandates that an assembly notification must include the consent of the owner or occupier of the place of assembly. A public place that is subject to a local authority's control and care, such as a public car park, requires the consent of that authority if it is to be used for an assembly rather than its designated purpose; (ii) False imprisonment requires the complete and total restriction of movement. Partial restriction of freedom of movement does not amount to false imprisonment; (iii) A public officer's action based on a misinterpretation of the law does not constitute misfeasance in public office if he was not acting with reckless indifference to the limits of their authority or with reckless indifference to the probability of harming the plaintiff.*

CONSTITUTIONAL LAW: *Fundamental rights – Violation of – Rights under Peaceful Assembly Act 2012 ('PAA') and Federal Constitution – Organisers organised assembly at proposed venue to march to another destination – Conditions imposed by police – Whether complied with – Whether police acted ultra vires in using s. 15 of PAA to impose condition absolutely prohibiting assembly to be organised and in taking action to prevent march – Whether there was breach of constitutional rights*

TORT: *False imprisonment – Peaceful assembly and march – Participants gathered at venue to march to another destination – Police formed human chain and blocked all participants from marching – Whether participants able to move about freely – Whether only partial restriction – Whether partial restriction of freedom of movement amounts to imprisonment*

TORT: *Misfeasance in public office – Peaceful assembly and march – Organisers organised assembly at proposed venue to march to another destination – Public officer prohibited march due to misinterpretation of relevant law – Whether there was misfeasance in public office in imposing prohibition – Whether there was abuse of public power or authority by public officer – Whether public officer recklessly indifferent as to limits of his public power or authority – Federal Constitution, art. 132(1)(d)*

The Malaysian Bar ('first plaintiff') had organised 'Walk for Judicial Independence', a peaceful assembly and march ('WFJI assembly and march') to take place on 17 June 2022 at the Padang Merbok public car park ('car park'). The staff of the first plaintiff then attempted to deliver a notice, pursuant to s. 9(1) of the Peaceful Assembly Act 2012 ('PAA'), to the first defendant but the officers under the command of the first defendant refused to accept it. The reasons given for the refusal was that the plaintiffs did not obtain the necessary consent/approval from, *inter alia*, the Dewan Bandaraya Kuala Lumpur ('DBKL') and the Director General of Health ('DGH'); no conditions under s. 15 of the PAA were imposed. In a meeting that followed, between the first defendant and the first plaintiff's representatives, the former informed the latter that their proposed venue was allowed but they would be prohibited from marching to Parliament. In less than 24 hours prior to the WFJI assembly and march, the first defendant then prepared a letter addressed to the plaintiffs, which formally imposed certain conditions, *ie*, no processions permitted and no acts causing nuisance/annoyance/injury. On the day of the event, *ie*, 17 June 2022, the plaintiffs, members of the first plaintiff and some members of the public gathered at the car park for the WFJI assembly and march. When the plaintiffs attempted to march to Parliament, the policemen, under the command of the second defendant, formed a human chain and blocked all the participants at the car park. During the assembly, the second defendant informed the participants that they were not allowed to march due to the conditions imposed by the first defendant, under s. 15 of the PAA. Upon negotiations, the second defendant initially offered to allow a small, limited number of participants to march to Parliament. The plaintiffs insisted on all participants being allowed to march to Parliament but the police continued to refuse to clear the path. The second plaintiff then called the Deputy Minister of Law ('Deputy Minister') and informed her that the participants were unable to march to Parliament. The Deputy Minister arrived five minutes later to receive the first plaintiff's memorandum on behalf of the Prime Minister. Hence, the present suit filed by the plaintiffs, pleading, *inter alia*, violation of their rights under the PAA and the Federal Constitution ('FC') and torts of false imprisonment and misfeasance in public office.

Held (declaring first defendant acted *ultra vires* in using s. 15 of the PAA to impose condition to absolutely prohibiting assembly to be organised and in preventing march):

(1) Even though, under the PAA, no permit is required from the police for an assembly to be held and only a notification is required to be given, such notification would be valid if and only if it complies with s. 10 of the PAA. Section 10(c) contains a requirement for the s. 9 notification to be accompanied by a copy of the consent of the owner or occupier of the place of assembly. The plaintiffs had intended to organise an

assembly to be attended by approximately 500 persons with speeches to be delivered; it was not a small event. The court may not turn a blind eye to the fact that, pursuant to s. 63 of the Local Government Act 1976, the DBKL has the general control and care of the car park. Even though the car park was a car park open to the public, it was a place that required maintenance and supervision. (paras 45-47)

(2) Since the DBKL had a statutory duty to control and care for the car park, it could be held for any incidents within that public car park which are caused by their negligence, if any, in upkeeping it. Therefore, consent from the DBKL was required for the following reasons: (i) the plaintiffs had planned to use the car park as a meeting place and to set up a stage there for them to deliver speeches. In other words, the car park was not to be used for its designated purpose as a car park but as premises for an event organised by the first plaintiff. If no permission is required from the occupier *cum* legal guardian of the public car park, it would mean that it would be open – free of charge – to members of the public to hold private events as and when they please, including wedding functions, sports carnivals and concerts; and (ii) the term 'assembly', as defined in s. 3 of the PAA, specifically referred to an intentional and temporary assembly of a number of persons in a 'public place' while s. 11 makes it mandatory for the consent of the owner or occupier of the place of assembly to be obtained. Consent was not required if and only if it is a religious assembly or a funeral procession or an assembly held at a place gazetted by the Minister as a 'designated place of assembly', under s. 25 of the PAA. Since the car park was not a gazetted designated place of assembly, it was mandatory for the plaintiffs, who had planned to use the car park for an assembly, to apply for the DBKL's consent to fulfil the requirement of s. 11 of the PAA. (paras 48-50)

(3) A s. 9(1) notification must be a notification that complies with the requirements of s. 10 of the PAA. Thus, the first defendant did not err in holding on to the s. 9(1) notification – which was short of a consent letter from the DBKL – and requesting from the first plaintiff the submission of a consent letter. The plaintiffs complied with s. 10 of the PAA only on 14 June 2022 when they submitted the DBKL's consent letter to the office of the first defendant. Since the first defendant's letter dated on 15 June 2022 was issued to the plaintiffs within three days of all relevant s. 10 notification documents being submitted to make the s. 9(1) notification complete, there was no delay on the part of the first defendant in complying with s. 14(1) of the PAA by issuing his letter on 15 June 2022. (paras 51 & 53)

(4) The manner in which the DGH regulated permitted activities was through a negative list of prohibited activities in their standard operating procedure ('SOP') published on the website of the Majlis Keselamatan Negara. Further, the DGH had issued a SOP to drop all the negative list of prohibited activities, which took effect from 15 May 2022, to allow the public to gather outdoors without face masks. If an activity was not contained in the negative list, such activity was deemed permitted without prior approval. The outdoor activities of the assembly and march planned by the plaintiffs were not activities prohibited as at 17 June 2022. Therefore, the first defendant, in his capacity as the OCPD of Dang Wangi Police District, had acted *ultra vires* in imposing a prohibition of the march by relying on reg. 6(1) of the Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) (National Recovery Plan) (Transition Phase to Endemic) Regulations 2022 ('Regulations'), as stated in his letter of 15 June 2022, absolutely prohibiting a march from being held by the first plaintiff. (paras 54 & 55)

(5) There was not a single one of the participants who could testify of having been cornered by a few police officers at a particular place within the said car park so as to have been temporarily imprisoned. The participants were able to move about freely within the car park while the second defendant was continuing his efforts to negotiate with the plaintiffs. After the second plaintiff handed the said memorandum to the Deputy Minister, who then gave a speech apologising to the participants, the participants of the assembly dispersed peacefully without any hindrance by the second defendant and/or his subordinates. During the short period when the participants of the assembly were blocked by the police from marching to Parliament, before the arrival of the Deputy Minister, the movement was only partially restricted. Partial restriction of freedom of movement was not imprisonment. The plaintiffs' prayer for a declaration of false imprisonment was therefore dismissed. (paras 65-67)

(6) Tort of misfeasance in public office would be established if there is abuse of public power or authority by a public officer who was recklessly indifferent as to the limits of his public power or authority and who acted with reckless indifference to the probability of harming the plaintiff. The first defendant, being an officer of one of the public services established under art. 132(1)(d) of the FC, was no doubt a public officer. He did make a decision to prohibit a march to Parliament. However, his reliance on reg. 6(1) of the Regulations was due to his misinterpretation of the law. Given that the first defendant had little time to consult the Attorney General's Chambers within a short span of time, the first defendant did not commit any misfeasance in public office in imposing that prohibition in his letter. (paras 68 & 69)

(7) The first defendant should have facilitated the march by controlling traffic to Parliament and ensuring the safety of the participants. Thus, the first defendant had obviously acted *ultra vires* in absolutely prohibiting the march. The plaintiffs had, in fact, achieved almost the whole objective of the assembly on 17 June 2022 *sans* the march. Therefore, there should be no award for special damages. Nominal damages of RM1 were awarded to the first plaintiff. Since this was a case of public interest and the plaintiffs had succeeded only in part, each party was to bear their own costs. (paras 73 & 74)

Case(s) referred to:

Cheow Siong Chin v. Menteri Dalam Negeri, Malaysia & Ors [1985] 1 CLJ 229; [1985] CLJ (Rep) 59 SC ***(refd)***

Hassan Marsom & Ors v. Mohd Hady Ya'akop [2018] 7 CLJ 403 FC ***(refd)***

Shahrudi Abidin v. Datuk Wira Abu Seman Yusop Timbalan Menteri Dalam Negeri Kementerian Dalam Negeri Malaysia & Ors [2021] 1 CLJ 52 CA ***(refd)***

Tony Pua Kiam Wee v. Government Of Malaysia & Another Appeal [2020] 1 CLJ 337 FC ***(refd)***

Legislation referred to:

Criminal Procedure Code, s. 11

Federal Constitution, arts. 5, 8, 9, 10, 132(1)(d)

Government Proceedings Act 1956, s. 5

Legal Profession Act 1976, s. 41

Local Government Act 1976, ss. 2, 63

Peaceful Assembly Act 2012, ss. 3, 4, 9(1), 10(c), 11, 12(3), 14(1), (2), 15, 16, 25

Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) (National Recovery Plan) (Transition Phase To Endemic) Regulations 2022, reg. 6(1)

Prevention and Control of Infectious Diseases Act 1988, reg. 6

For the plaintiffs - New Sin Yew, Lee Yee Woei & Izni Syazwani; M/s Amerbon
For the defendants - Muhammad Al-Saifi Hj Hashim; SFC & Asyraf Abd Hamid; FC

Reported by Najib Tamby

JUDGMENT

Gan Techiong JC:

Introduction

[1] This civil suit was filed by the plaintiffs' pleading, *inter alia*, violation of their rights under the Peaceful Assembly Act 2012 ("the PAA 2012") and Federal Constitution, torts of false imprisonment and misfeasance in public office.

[2] The plaintiffs had organised a peaceful assembly and march to take place on 17 June 2022, which they named: "Walk for Judicial Independence". The cause of their grievances, as pleaded in their statement of claim, is that the first defendant, who was then the officer-in-charge of the

Police District of Dang Wangi, had prohibited the plaintiffs, members of the Bar and some members of the public, who had assembled at a public car park known as the Padang Merbok public car park on the said date from marching to Parliament to deliver a memorandum to the then Prime Minister of Malaysia.

[3] After considering the evidence adduced during trial and submissions of learned counsel for the plaintiffs and the learned Senior Federal Counsel for the defendants, I find that the first defendant, in his capacity as the officer-in-charge of the Police District of Dang Wangi had acted *ultra vires* on 15 June 2022 and on 17 June 2022. However, I decided that this court ought to issue only one declaration, and not all the declarations sought by the plaintiffs.

[4] While reading out my broad grounds, I have expressed my appreciation to counsel on both sides for their agreeing on the quantum of damages, *ie*, that nominal damages of only RM1 be awarded to the first plaintiff. This spared me from having to assess general damages for such a case – which is not a run-of-the-mill one.

The Parties In This Civil Suit

[5] The first plaintiff is established under s. 41 of the Legal Profession Act 1976 as a body corporate with perpetual succession and a common seal, and with power subject to the said Act to sue and be sued in its corporate name.

[6] The second plaintiff is an advocate and solicitor of the High Court of Malaya and was, at the material time, the President of the Malaysian Bar.

[7] The third plaintiff is an advocate and solicitor of the High Court of Malaya and was, at the material time, the Vice-President of the Malaysian Bar.

[8] The fourth plaintiff is an advocate and solicitor of the High Court of Malaya and was, at the material time, the Secretary of the Malaysian Bar.

[9] The fifth plaintiff is an advocate and solicitor of the High Court of Malaya and was, at the material time, the Treasurer of the Malaysian Bar.

[10] As mentioned at the outset, the first defendant is a senior police officer and was, at the material time, the officer-in-charge of the police district ("the OCPD") of the Dang Wangi Police District in Kuala Lumpur.

[11] The second defendant is a police officer, and was, at the material time, serving at the headquarters of the Dang Wangi Police District, under the command of the first defendant.

[12] The third defendant (the Royal Malaysian Police) is one of the public services established under art. 132(1)(d) of the Federal Constitution ("the Constitution").

[13] The fourth defendant is the Inspector-General of Police of Malaysia and may be held vicariously liable for the actions of the first defendant and second defendant in performing their duties as police officers.

[14] The fifth defendant is the Minister responsible for the third defendant.

[15] The sixth defendant is the Government of Malaysia and is, at all material times the employer of the first defendant to the fifth defendant. Pursuant to s. 5 of the Government Proceedings Act 1956 ("GPA 1956"), the sixth defendant is vicariously liable for the tort or for any wrongful act committed by the first defendant to the fifth defendant.

The Plaintiffs' Narration Of Material Events

[16] The plaintiffs' version of material events is best summed up in a chronology of events, as follows:

(i) 27 May 2022 – first plaintiff (Malaysian Bar) held an Extraordinary General Meeting (EGM) and passed a resolution to hold a peaceful assembly and march to Parliament with the purpose of objecting to the Malaysia Anti-Corruption Commission ("MACC") publicly disclosing their investigation of a Court of Appeal Judge. They named it "Walk for Judicial Independence Assembly and March" ("WfJI Assembly and March");

(ii) 29 May 2022 – the Bar Council scheduled the WfJI Assembly and March to be held on 17 June 2022;

(iii) 3 June 2022 – staff of the first plaintiff attempted to deliver a notice pursuant to s. 9(1) of the PAA 2012 to the first defendant. It was alleged that the officers at the Dang Wangi Police Station under the command of the first defendant refused to accept it on the ground that the plaintiffs did not obtain the consent of Dewan Bandaraya Kuala Lumpur ("DBKL") to use the proposed venue;

(iv) 7 June 2022 – once again, the staff of the first plaintiff attempted to deliver the notice pursuant to s. 9(1) of the PAA 2012 to the first defendant. It was alleged that police officers on duty in the Dang Wangi Police Station continued to refuse to accept the notice on the same grounds. The notice was left at a counter in the said police station;

(v) 10 June 2022 – the first defendant replied to the notification, requesting various consent letters/approvals from DBKL, Director General of Health, Security Council, Parliament Management Department, *etc*. No conditions under s. 15 of the PAA 2012 were imposed in this letter;

(vi) 14 June 2022 – the first defendant had a meeting with the first plaintiff's representatives; verbally informed them that their proposed assembly at the Padang Merbok public car park was allowed, but they would be prohibited from marching to Parliament. The first defendant was willing to allow only ten individuals to march to Parliament;

(vii) 15 June 2022 – the first defendant prepared a letter dated 15 June 2022 addressed to the plaintiffs;

(viii) 16 June 2022 – the first plaintiff received the first defendant's said letter dated 15 June 2022, formally imposing conditions: no procession permitted per reg. 6(1) of the Regulations, no acts causing nuisance/annoyance/injury;

Note: The plaintiffs highlighted to this court that the first defendant's said letter dated 15 June 2022 was received less than 24 hours prior to the WfJI Assembly and March scheduled to be held on 17 June 2022;

(ix) 17 June 2022 (9am - 10am) – the plaintiffs, members of the first plaintiff and some members of the public started to gather at the Padang Merbok public car park for the WfJI Assembly. Plastic barriers were seen to have been placed around the premises;

(x) 17 June 2022 (10am - 10.35am) – a few hundred people ("the participants") have assembled at the Padang Merbok public car park. Several Bar Council members gave speeches on a temporary stage that was set up there;

(xi) 17 June 2022 (at around 10.35am) – the plaintiffs attempted to march to Parliament whereupon policemen under the command of the second defendant formed a human chain and blocked all the participants in the Padang Merbok public car park from marching to Parliament;

(xii) 17 June 2022 (during the assembly) – the second defendant informed the participants they were not allowed to march due to conditions imposed by first defendant under s. 15 of the PAA 2012. Negotiations ensued, and the second defendant initially offered to allow only ten of the participants to march to Parliament, then 20, and finally 30 of the participants. The plaintiffs insisted on all the participants being allowed to march to Parliament but the police personnel under the command of the second defendant continued to refuse to clear the path;

(xiii) 17 June 2022 (about 11am) – the second plaintiff called the Deputy Minister of Law, YB Mas Ermieyati on her handphone and informed her that the participants were unable to march to Parliament;

(xiv) 17 June 2022 (about 11.05am) – the Deputy Minister of Law, YB Mas Ermieyati arrived at the Padang Merbok public car park to receive the first plaintiff's memorandum on behalf of the Prime Minister;

(xv) 17 June 2022 (around 11.15am) – after the second plaintiff handed the said memorandum to the Deputy Minister who gave a speech apologising to the participants, the participants of the assembly dispersed peacefully;

(xvi) 17 June 2022 (afternoon) – the first defendant issued a press statement about having detected and investigating the assembly, and warning the public;

(xvii) 24 June 2022 – the second defendant asked the second plaintiff, Chan Weng Keng, and Rajendran Samuel Devaraj to go to the Dang Wangi Police Station for investigation purposes;

(xviii) 19 September 2022 – the second plaintiff, the fourth plaintiff, Chan Weng Keng, and Rajendran Samuel Devaraj filed a judicial review application (WA-25-503-09-2022) to challenge the validity of notices that were issued to them under s. 111 of the Criminal Procedure Code;

(xix) 26 September 2022 – the first defendant issued a letter stating "NFA" (no further action) for the case against those four individuals; and

(xx) 13 October 2022 – the said judicial review application was withdrawn as it had been rendered academic by the first defendant issuing the "NFA" letter.

Summary Of The Plaintiffs' Evidence And Submissions

[17] The second, third, fourth and fifth plaintiffs were all testified as witnesses for the first plaintiff and for themselves respectively, narrated the events that transpired, as stated in their version of the chronology of events set out in para. 16 above.

[18] Learned counsel for the plaintiffs submitted that premised on those facts, the main issues for this court to decide are as follows:

(i) whether the defendants had acted in breach of the PAA 2012; and

(ii) if indeed the defendants had acted in breach of the PAA 2012, whether the defendants' actions:

(a) in preventing the plaintiffs from marching to Parliament amounted to false imprisonment;

(b) amounted to misfeasance in public office; and

(c) violated the plaintiffs' constitutional rights.

[19] It was further submitted for the plaintiffs that the first defendant was out of time in imposing the conditions under s. 15 of the PAA 2012. On this point, it was contended as follows: that s. 14(1) of the PAA 2012 requires the first defendant to respond to the notice under s. 9(1) of the PAA 2012 within three days of receipt of the notice and shall, in the response, inform the organiser of the restrictions and conditions imposed under s. 15 of the PAA 2012, if any. In the present case, the first defendant received the notice on 7 June 2022, if not, by the earlier date of 3 June 2022. However, the first defendant only imposed conditions under s. 15 of the PAA 2012 on 16 June 2022 through its letter dated 15 June 2022 (received on 16 June 2022) to the first plaintiff, less than 24 hours before the assembly on 17 June 2024.

[20] According to the plaintiffs' learned counsel, the consequence of not imposing conditions in time is found at s. 14(2) of the PAA 2012 which states that "if the officer in charge of the police district does not respond to the notification in accordance with sub-s. (1), the assembly shall proceed as proposed in the notification", and as such, the first defendant had no power to impose any conditions. The plaintiffs thereby contend that the conditions imposed were unlawful and the defendants had acted unlawfully in preventing the plaintiffs from marching on 17 June 2022, and lastly, by imposing conditions less than 24 hours before the assembly, the first defendant had essentially deprived the plaintiffs of any avenue of appeal to the Minister under s. 16 of the PAA 2012.

[21] As his further and alternative submissions, learned counsel for the plaintiffs submitted that irrespective of what had transpired leading to the imposition of conditions, the first defendant had imposed an illegal condition in prohibiting the march from the Padang Merbok public car park to Parliament. On this point, it was contended as follows: that the PAA 2012 had been amended by Parliament in 2019 to remove the prohibition on street protest. For all intents and purposes, the plaintiffs' march to Parliament is a moving assembly under the current definition of an "assembly" or a street protest under the pre-amendment definition of the same. Any conditions imposed by the OCPD under s. 15 of the PAA 2012 cannot amount to a prohibition of street protest, which had been permitted by Parliament. The defendants' reliance on reg. 6 of the Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) (National Recovery Plan) (Transition Phase To Endemic) Regulations 2022 ("the Regulations") for the prohibition of the march was unlawful. The plaintiffs argue that the first defendant could not rely on reg. 6 of the Regulations to prohibit a street protest when Parliament had allowed it, that the Regulations, being a subsidiary legislation, cannot override the PAA 2012, being a primary legislation and go beyond the scope of its parent legislation, *ie*, the Prevention and Control of Diseases Act 1988 ("PCIDA"), which governs public health and not assemblies which is governed by the PAA, and

therefore a harmonious reading of the PAA 2012, the Regulations, and the Prevention and Control of Infectious Diseases Act 1988 ("PCIDA") would mean that reg. 6 of the Regulations cannot be used to negate the rights of the plaintiffs under the PAA 2012.

[22] Learned counsel further argues that as the term used in the Regulations is "procession" which is different from the term used in the PAA 2012, which is "street protest", such distinction is crucial because when Parliament uses different words, it intends to mean different things. "Procession" under the Regulations cannot be interpreted to include a moving assembly or "street protest" under the PAA. It was therefore emphasised on behalf of the plaintiffs that it was unlawful for the first defendant to rely on reg. 6 to prohibit the proposed march.

[23] On the issue about using the Padang Merbok public car park for the assembly, learned counsel for the plaintiff cited ss. 2 and 63 of the Local Government Act 1976 and submitted that Padang Merbok is a public place and therefore no permission was required from Dewan Bandaraya Kuala Lumpur for the assembly to be held there.

[24] The plaintiffs' learned counsel went on to rely on the judgment of the the Federal Court in *Tony Pua Kiam Wee v. Government Of Malaysia & Another Appeal* [2020] 1 CLJ 337; [2019] 12 MLJ 1 to submit that the first defendant has also committed the tort of misfeasance in public office. It was submitted that as the first defendant is a public officer, all the key ingredients of the tort are present in the present case, which are: an abuse of public power or authority by a public officer who was recklessly indifferent as to the limits of his public power or authority, and who acted with reckless indifference to the probability of harming the plaintiff or a class of persons of which the plaintiff was one. According to counsel, the first defendant had abused his power by prohibiting the plaintiffs' march when he had no power to do so under the PAA.

[25] Further, it was submitted that the first defendant's prohibition of the plaintiffs' march was unlawful as the defendants had no basis to restrain or block the plaintiffs from marching to Parliament, and therefore such restraint or blockade by the defendants amounted to false imprisonment. Learned counsel cited *Shahrudi Abidin v. Datuk Wira Abu Seman Yusop Timbalan Menteri Dalam Negeri Kementerian Dalam Negeri Malaysia & Ors* [2021] 1 CLJ 52 and *Hassan Marsom & Ors v. Mohd Hady Ya'akop* [2018] 7 CLJ 403; [2018] 5 MLJ 141 as authorities in support of his contention of false imprisonment.

[26] Reference was also made by the plaintiffs' learned counsel to arts. 5 (life), 8 (equal protection of the law), 9 (freedom of movement), and 10 (freedom of assembly) of the Federal Constitution to submit that the defendants' alleged breach of the PAA 2012 amount to a violation of the plaintiffs' constitutional rights.

[27] In the prayers in their lengthy statement of claim, the plaintiffs sought various declarations of rights, general damages, aggravated damages and exemplary damages.

Summary Of The Defendants' Evidence And Submissions

[28] The learned Senior Federal Counsel ("SFC") who appeared for the defendants submitted as follows:

(i) the prohibition of procession and attempts to stop the move to march to Parliament did not constitute false imprisonment;

(ii) the conditions imposed by the police were lawful and did not constitute misfeasance in public office; and

(iii) there was no breach of constitutional rights.

[29] The learned SFC went on to submit that there were attempts by the police to negotiate with the plaintiffs, and that upon discussion, the number of participants who were allowed to march to Parliament were increased from ten to 20 and finally to 30, but the police's offers enabling them to march to Parliament "were never taken by the plaintiffs. This evidence appears unchallenged throughout the trial".

[30] In seeking to exclude other participants from the benefit of this action, the learned SFC submitted that this civil suit is not a class action by all the participants of the assembly, and the question of whether there were any breaches of constitutional rights should be limited to only the constitutional rights of the second, third, fourth and fifth defendants.

[31] It was further contended for the defendants that it was mandatory to obtain the consent of DBKL because s. 63 of the Local Government Act 1976 clearly stipulates that the DBKL has the general control and care of the said public place. The learned SFC pointed out that since the facts of the instant case showed that the plaintiffs intended to organise an assembly to be attended by approximately 500 persons with speeches to be delivered, it would be absurd to say that in such a situation, consent of the DBKL was not required.

[32] By way of illustration, the learned SFC posed a hypothetical question on whether members of the public may freely organise wedding ceremonies or sports carnival at the Padang Merbok public car park without the consent of DBKL. He concluded on this point by submitting that DBKL's role in having the general control and care of the said car park "entitle them to fall within the ambit of the definition of owner or occupier of Padang Merbok" public car park.

[33] The learned SFC highlighted the fact that at the time when the said notification was served at the Dang Wangi Police Station, the plaintiffs had yet to obtain the consent of the owner/occupier of the Padang Merbok public

car park. The first plaintiff obtained approval *vide* a letter from DBKL only on 14 June 2022 and paid a sum of RM400 to DBKL, as the rental required to use Padang Merbok public car park, only after receiving the approval letter. On the law on this point, the learned SFC submitted that s. 9 of the PAA 2012 ought to be read together with s. 10 which mandates the notification to fulfil certain the prescribed criteria, including proof of consent of the owner or occupier of the place of assembly.

[34] The point on law on false imprisonment was dealt with by the learned SFC who submitted that the authorities cited by learned counsel for the plaintiffs, for *eg*, *Shahrudi Abidin* (*supra*), involve "actual arrest and detention", unlike the facts of the present case. Several English cases were cited in support of his submission that the law on tort of false imprisonment "requires the constraint to be total or complete in restricting a person to a particular place".

[35] As for the law on tort of misfeasance in public office, it was submitted that the elements of that tort were not proven in this case. *Tony Pua Kiam Wee v. Government Of Malaysia* (*supra*) was cited by the learned SFC as authority in support of the second defendant's evidence, who testified as follows:

> Plaintif-Plaintif dan kesemua peserta perhimpunan yang lain tidak pemah dihalang daripada meninggalkan tempat perhimpunan tersebut. *Plaintif-Plaintif tidak dikepung dan bebas keluar masuk tempat letak kereta Padang Merbok. Mereka hanya dihalang dari berarak ke bangunan Parlimen.* Jadi, dakwaan 'penahanan salah tersebut' merupakan suatu tanggapan yang salah. (emphasis added)

Analysis Of The Facts And Law

[36] As alluded to above, this civil suit was filed by the plaintiffs who pleaded, *inter alia*, violation of their rights under the PAA 2012 and Federal Constitution, torts of false imprisonment and misfeasance in public office because the first defendant, who was the officer-in-charge of the Police District (OCPD) of Dang Wangi, had imposed a condition that prohibited the plaintiffs, members of the Bar and some members of the public, who had assembled at the Padang Merbok public car park, from marching to Parliament on 17 June 2022 to deliver a memorandum to the Prime Minister of Malaysia.

[37] Section 3 of the PAA 2012 used to contain a definition of "street protest" while s. 4 expressly stated that the right to organise an assembly under the said Act does not extend to a street protest. I had used words that are in the past tense because an Amendment Act A1600, which came into force on 1 November 2019, had deleted "street protest" from ss. 3 and 4 of the Peaceful Assembly Act 2012.

[38] The deleted definition of "street protest" reads:

> "Street protest" means an open air assembly which begins with a meeting at a specified place and consists of walking in a mass march or rally for the purpose of objecting to or advancing a particular cause or causes.

[39] As a matter of fact, the deleted definition of "street protest" is the most appropriate description of the event planned by the plaintiffs, which was to be held on 17 June 2022, beginning with an assembly at Padang Merbok public car park and thereafter to march to Parliament to submit a memorandum to the Prime Minister.

[40] Despite the amendments made by the said Amendment Act, it must be noted that s. 3 of the PAA 2012 defines the word "assembly" as an assembly of a number of persons in a public place, whether or not the assembly is at a particular place or moving, *ie*, with the participants moving together from one place to another, which would cover street protests.

The Undisputed Facts Of The Case In Chronological Order

[41] On 27 May 2022, the first plaintiff had passed a resolution to hold a peaceful assembly and march to Parliament to express the objection of the members of the first plaintiff against the action of the MACC in publicly announcing that an investigation was being carried out on a judge of the Court of Appeal of Malaysia.

[42] As the area in which the proposed assembly and march is within the Dang Wangi Police District, on 3 June 2022, the first plaintiff's letter together with a notification under s. 9(1) in a form following the format set out in the Fourth Schedule of the said Act, were sent by hand to the Dang Wangi Police Station by an employee of the first plaintiff. There is a dispute about what occurred at the police station on 3 June 2022. From the evidence, it appeared to be a situation of either a lack of any standard operating procedure ("SOP") to guide the police personnel manning the counters in the police station on how to deal with letters and notices delivered by hand by members of the public or a situation of counter personnel being unfamiliar with the police station's existing SOP. A second attempt made on 7 June 2022, which is undisputed, resulted in the first plaintiff's s. 9(1) notification being served by leaving it at the police station.

[43] Now, s. 14(1) of the Act requires the OCPD to respond within three days of his receipt of a s. 9(1) notification. In this case, the first defendant, in his capacity as the OCPD of Dang Wangi, did respond with his letter dated 10 June 2022 within three days from 7 June 2022. In his letter, the OCPD referred to s. 10(c) of the PAA 2012 that makes it mandatory for the s. 9(1) notification to be accompanied by a consent letter from the owner or occupier of the place of assembly, *ie*, where the assembly is to take place.

[44] I note that s. 11 of the PAA 2012 states as follows:

> **The organiser of an assembly,** other than a religious assembly or a funeral procession or an assembly held at a designated place of assembly, **shall obtain the consent of the owner or occupier of the place of assembly** for it **to be used for the purpose of the assembly.** (emphasis added)

[45] Even though under the PAA 2012, no permit is required from the police for an assembly to be held, and only a notification is required to be given, in my view, such notification would be valid if and only if it complies with s. 10 of the said Act. Section 10(c) contains a requirement for the s. 9 notification to be accompanied by a copy of the consent of the owner or occupier of the place of assembly. Learned counsel on both sides have differing views as to whether the consent of DBKL was required to use the Padang Merbok public car park for the assembly planned by the plaintiffs.

[46] The facts show that the plaintiffs intended to organise an assembly to be attended by approximately 500 persons with speeches to be delivered. It was not a small event to be attended by a handful of people. I am of the view that the learned SFC had effectively used an appropriate illustration to rebut the submission of learned counsel for the plaintiffs that no permission is required from DBKL. He envisaged a scenario of members of the public freely organising wedding ceremonies and sports carnivals at the Padang Merbok public car park without the consent of DBKL and causing chaos to ensue.

[47] This court may not turn a blind eye to the fact that pursuant to s. 63 of the Local Government Act 1976, DBKL has the general control and care of the Padang Merbok public car park. Even though the Padang Merbok public car park is a car park open to the public, it is a place that requires maintenance and supervision. Section 63 states:

> A local authority shall have the **general control and care** of all places within the local authority area which have been or shall be at any time set apart and vested in the local authority for the use of the public or to which the public shall at any time have or have acquired a common right. (emphasis added)

[48] Since DBKL has a statutory duty to control and care for the Padang Merbok public car park, it could be held liable for any accidents within that public car park which are caused by their negligence (if any) in upkeeping it. Therefore, I agree with the learned SFC that DBKL is, for all intents and purpose, the occupier of the Padang Merbok public car park for the purpose of s. 10(c) of the PAA 2012.

[49] I am of the view that even though the Padang Merbok public car park is a car park open to the public, consent from DBKL was required due to two reasons. First, the plaintiffs had planned to use it as a meeting place and

to set up a stage there for them to deliver speeches. In other words, the Padang Merbok public car park was not to be used for its designated purpose as a car park but as premises for an event organised by the first plaintiff. Thus, I have to agree with submissions by the learned SFC that if no permission is required from the occupier *cum* legal guardian of the public car park, it would mean that it would be open – free of charge – to members of the public to hold private events there as and when they please, including wedding functions, sports carnivals and concerts.

[50] The second reason for my ruling that the consent of DBKL is required is because the term "assembly" as defined in s. 3 of the PAA 2012 specifically refers to an intentional and temporary assembly of a number of persons in a "public place" while s. 11 makes it mandatory for the consent of the owner or occupier of the place of assembly to be obtained. Consent is unrequired if and only if it is a religious assembly or a funeral procession or an assembly held at a place gazetted by the Minister as a "designated place of assembly" under s. 25 of the PAA 2012. Since the Padang Merbok public car park is not a gazetted designated place of assembly, it was mandatory for the plaintiffs, who had planned to use the Padang Merbok public car park for an assembly, to apply for DBKL's consent to fulfil the requirement of s. 11 of the PAA 2012.

[51] In my judgment, a s. 9(1) notification must be a notification that complies with the requirements of s. 10 of the PAA 2012. Thus, the OCPD (first defendant in this case) did not err in holding on to the s. 9(1) notification – which was short of a consent letter from DBKL – and sending his letter on 10 June 2022 to the first plaintiff to request the submission of a consent letter.

[52] It is undisputed that the plaintiffs did subsequently obtain a consent letter from DBKL and forwarded it to the first defendant on 14 June 2022. Upon receipt of this letter, the first defendant called a meeting with the plaintiffs, which was held at the Dang Wangi Police Station on 15 June 2022. Suffice to say that there was no amicable agreement between the parties as to how the assembly and march scheduled on 17 June were to be conducted.

[53] In this case, the plaintiffs complied with s. 10 of the PAA 2012 only on 14 June 2022 when they submitted DBKL's consent letter to the office of the first defendant. Since the first defendant's letter dated 15 June 2022 was issued to the plaintiffs within three days of all relevant s. 10 notification documents being submitted to make the s. 9(1) notification complete, I find that there was no delay on the part of the first defendant in complying with s. 14(1) of the Peaceful Assembly Act 2012 by issuing his letter on 15 June 2022. For reference, the relevant part of s. 10(c) is set out below:

The notification made under subsection 9(1) shall –

(a) be in the form in the Fourth schedule;

(b) be signed by the organizer;

(c) **be accompanied by a copy of the consent of the owner or occupier of the place of assembly,** if applicable; (emphasis added)

[54] Next, I move on to consider the restrictions and conditions imposed in the OCPD's letter dated 15 June 2022. I agree with submissions by learned counsel for the plaintiffs that in June 2022, the manner in which the Director-General of Health regulated permitted activities was through a negative list of prohibited activities in their SOP published on the website of the Majlis Keselamatan Negara ("MKN"). Further, on 1 April 2022, the Director General of Health had issued a SOP to drop all the negative list of prohibited activities, which took effect from 15 May 2022, to allow the public to gather outdoors without face masks. If an activity is not contained in the negative list, such activity is deemed permitted without any prior approval. The outdoor activities of the assembly and march planned by the plaintiffs were not activities prohibited as of 17 June 2022.

[55] Therefore, it is the finding of this court that the first defendant, in his capacity as the OCPD of Dang Wangi Police District, had acted *ultra vires* in imposing a prohibition of the march by relying on reg. 6(1) of the Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) (National Recovery Plan) (Transition Phase To Endemic) Regulations 2022 – as stated in his letter of 15 June 2022 absolutely prohibiting a march from being held by the first plaintiff.

[56] I find that the evidence adduced in this case proved that the assembly was allowed to take place on 17 June 2022, a temporary stage was set up, and speeches were delivered. The further issues in dispute relate to the conduct of the first defendant and his subordinates on that day in enforcing the conditions imposed in the first defendant's letter dated 15 June 2022 to prevent the participants of the assembly from marching to Parliament on 17 June 2022.

[57] The defendants' evidence was that the plastic barriers at the said car park were left there by some contractors who carried on works in the vicinity, and the police and the participants of the assembly were separated by the plastic barriers. Regardless of who placed those plastic barriers there, the undisputed facts are that there was no physical contact between the police and the participants at the assembly, and no arrest was made by the police.

[58] The first defendant testified that he was not physically present at the assembly on 17 June 2022 but was constantly in touch with the second defendant who was the commanding officer present at the site of the assembly. They take the stand that the participants were prohibited only from marching to Parliament but were not restrained from leaving the Padang Merbok public car park.

[59] There was no evidence adduced by the plaintiffs as to whether the participants would have been allowed to leave the Padang Merbok public car park if he or she had decided to leave the assembly for the purpose of going elsewhere and not to march to Parliament.

[60] The evidence of the second plaintiff (the President of the Bar at the material time) under cross-examination confirmed that it was not a case of the second defendant and his subordinates using force to confine the participants to a corner of the Padang Merbok public car park. The evidence of witnesses from both sides confirmed that there were indeed dialogues being held, whereby the second defendant was trying to dissuade all the participants from marching to Parliament by offering to allow, initially just ten of the participants, then 20, and finally 30 of them to march to Parliament. The following screenshots of the notes of evidence are relevant:

ALS	Alright. Then what happened when police refused you from marching to Parliament?
KAREN	There was a discussion between us and the police and –
ALS	Ok, what is the negotiation then? What?
KAREN	Of course we wanted to, we requested that they open up the exit and remove the barricade so that we can walk to the Parliament and they said no. And then when we tried to reason with them and explain to them about the fact that we had given the notice and that we had already complied with the provisions of the Peaceful Assembly Act and that this is a right that they should not stop us from exercising, but they did not budge. And then later on they tried to negotiate with us saying that they will only allow 10 of us to walk out and we said that that would not be acceptable because there is nothing in the Peaceful Assembly Act that limits the number of people from gathering and doing a procession. And we had members coming from near and far including from other states and they had wanted to walk.

[61] The evidence of the plaintiffs was that in response to the second defendant's "offer" to allow up to 30 of the participants to Parliament, all the participants spoke with one voice, steadfast in adhering to their plans afoot, to march to Parliament on foot. The sentiments of the participants could be verbalised as: "We ain't going home before we march to Parliament". This could be gleaned from the oral evidence of the second plaintiff, as shown in the following screenshots of the notes of evidence:

KAREN	Yes, they said that we cannot leave that area to go to Parliament.
ALS	To go to Parliament. If you had wanted to go elsewhere, not Parliament, can you go out easily?

KAREN I don't think that we had asked to go anywhere else. We just wanted to go to Parliament. That was the, because that was the agenda for the walk.

[62] On the law applicable to the plaintiffs' allegation of false imprisonment, I find guidance in the judgment of the Federal Court in *Hassan Marsom & Ors v. Mohd Hady Ya'akop* (*supra*) which held as follows:

> [130] 'False imprisonment may be defined as an act of the defendant which directly and intentionally or negligently causes the confinement of the plaintiff within an area delimited by the defendant' (*The Law of Torts by Harry Street* (7th Ed) at p 23; see also *The Law of Torts in Singapore* by Gary Chan Kok Yew and Lee Pey Woan (2nd Ed) at 02.036). '... **partial restriction of freedom** of movement is not an imprisonment' (*Cheow Siong Chin v. Menteri Dalam Negeri, Malaysia & Ors* [1985] 2 MLJ 95 per Abdoolcader SCJ, delivering the judgment of the court). **False imprisonment is any total restraint of the liberty of the person,** for however short a time, by the use or threat of force or by confinement, without lawful cause. (emphasis added)

[63] The definition and scope of "false imprisonment" are also discussed in the Supreme Court judgment of *Cheow Siong Chin v. Menteri Dalam Negeri, Malaysia & Ors* [1985] 1 CLJ 229; [1985] CLJ (Rep) 59; [1985] 2 MLJ 95 – which was approved by the Federal Court in *Hassan Marsom & Ors v. Mohd Hady Ya'akop* (*supra*). Abdoolcader SCJ writing for the Supreme Court held:

> The reasoning in the cases we have referred to would appear to be directly in line with that in *Bird v. Jones* (1845) 7 QB 742; 115 ER 668, a false imprisonment action in which it was held that **partial restriction of freedom of movement is not an imprisonment,** where Lord Coleridge, C.J., said (at page 744):
>
> > And I am of the opinion that there was no imprisonment. To call it so appears to me to confound partial obstruction and disturbance with total obstruction and detention. A prison may have its boundary large or narrow, visible and tangible, or though real, still in the conception only; it may itself be moveable or fixed: but a boundary it must have; and that boundary the party imprisoned must be prevented from passing; he must be prevented from leaving that place, within the ambit of which the party imprisoning would confine him, except by prison-breach. Some confusion seems to me to arise from confounding imprisonment of the body with mere loss of freedom: it is one part of the definition of freedom to be able to go whithersoever one pleases; but imprisonment is something more than the mere loss of this power; it includes the notion of restraint within some limits defined by a will or power exterior to our own.
> >
> > (emphasis added)

[64] The point of law of relevance from the two authorities cited above is that the Federal Court in *Hassan Marsom & Ors v. Mohd Hady Ya'akop* (*supra*) agrees with the judgment of Abdoolcader SCJ in *Cheow Siong Chin v. Menteri Dalam Negeri, Malaysia & Ors* (*supra*) that partial restriction of freedom of movement is not an imprisonment, and that there must be total restraint of liberty of the complainant.

[65] Factually, as pointed out earlier above, there was no evidence of any of the participants requesting to be allowed to leave the assembly to go elsewhere but was restrained from doing so. The plaintiffs admitted that there was no physical contact between the police and the participants at the assembly, and no arrest was made by the police. There is not a single one of the participants who could testify of having been cornered by a few police officers at a particular place within the said car park, so as to have been temporarily imprisoned. The participants were able to move about freely within the Padang Merbok public car park while the second defendant was continuing his efforts to negotiate with the plaintiffs.

[66] As the chronology of events shows, the plaintiffs' speeches ended around 10.35am, and the Deputy Minister (as the representative of the Prime Minister) turned up at the Padang Merbok public car park by 11.05am, *ie*, within approximately 30 minutes to receive the memorandum from the plaintiffs. After the second plaintiff handed the said memorandum to the Deputy Minister who gave a speech apologising to the participants, the participants of the assembly dispersed peacefully without any hindrance by the second defendant and/or his subordinates.

[67] I find that during the short period when the participants of the assembly were blocked by the police from marching to Parliament before the arrival of the Deputy Minister, their movement was only partially restricted. Thus, I am bound to apply *Hassan Marsom & Ors v. Mohd Hady Ya'akop* (*supra*) and *Cheow Siong Chin v. Menteri Dalam Negeri, Malaysia & Ors* (*supra*) which held that partial restriction of freedom of movement is not imprisonment, and to dismiss the plaintiffs' prayer for a declaration of false imprisonment.

[68] Next, on the plaintiffs' plea on tort of misfeasance in public office, the judgment of the Federal Court in *Tony Pua Kiam Wee v. Government Of Malaysia & Another Appeal* [2020] 1 CLJ 337; [2019] 12 MLJ 1 is binding on this court. Tort of misfeasance in public office would be established if there is "abuse of public power or authority by a public officer who was recklessly indifferent as to the limits of his public power or authority, and who acted with reckless indifference to the probability of harming the plaintiff". Now, the first defendant, being an officer of one of the public services established under art. 132(1)(d) of the Constitution, is no doubt a public officer. He did make a decision on 15 June 2022 to prohibit a march to Parliament. However, his reliance on reg. 6(1) of the Prevention and

Control of Infectious Diseases (Measures Within Infected Local Areas) (National Recovery Plan) (Transition Phase To Endemic) Regulations 2022 was due to his misinterpretation of the law. Is the first defendant's said decision – which was due to his misinterpretation of the law – an abuse of public power or reckless indifference that meets the threshold of the tort as defined in *Tony Pua Kiam Wee* (*supra*)?

[69] It is noteworthy that the plaintiffs complied with s. 10 of the PAA 2012 only on 14 June 2022 when they submitted DBKL's consent letter to the office of the first defendant. The first defendant did respond expeditiously by issuing his letter on 15 June 2022 – which contains an *ultra vires* condition prohibiting the march proposed by the plaintiffs. Given that the first defendant had little time to consult the Attorney General's Chambers within that short span of time then, I would hold, on a balance of probabilities, that the first defendant did not commit any misfeasance in public office in imposing that prohibition in his letter the next day, *ie*, on 15 June 2022 and/or in enforcing the prohibition on 17 June 2022.

Conclusion

[70] Under s. 15 of the PAA 2012, the OCPD can impose conditions but not a total prohibition that defeats the purpose of the amendments made to the said Act by Act A1600. The amendments had, *inter alia*, deleted the prohibition against street protest. Street protests are to be allowed subject to reasonable conditions being imposed.

[71] Even though s. 12(3) of the PAA 2012 requires the first defendant (as the OCPD) to take into account the concerns and objections received from people who has interests, *ie*, the occupants of neighbouring premises, he should have imposed restrictions and conditions instead of a total prohibition of the march. As an example, the OCPD could have imposed a condition that the participants march in two rows on the public road to Parliament or such other conditions that ensure the safety of the participants as well as to avoid any nuisance to the people with interest. The first defendant should have facilitated the march by controlling traffic to Parliament and ensuring the safety of the participants. Thus, the first defendant, as OCPD of Dang Wangi, had obviously acted *ultra vires* in absolutely prohibiting the march.

[72] Since the plaintiffs were allowed to hold the assembly on 17 June 2022 at the Padang Merbok public car park, to deliver speeches there and to deliver the memorandum to the representative of the Prime Minister at the said venue, I find that the plaintiffs had in fact achieved almost the whole objective of the assembly on 17 June 2022 *sans* the march. Therefore, in fairness, there should be no award for special damages because those expenses claimed by the plaintiffs as special damages had served their purpose at the assembly.

[73] In view of the finding of facts and law that I have made, I am of the view that a declaration ought to be issued by this court to declare that the first defendant had, in his capacity as the officer-in-charge of the Dang Wangi Police District, acted *ultra vires* on 15 June 2022 in using s. 15 of the Peaceful Assembly Act 2012 to impose a condition absolutely prohibiting an assembly to be organised by the first plaintiff from marching to Parliament on 17 June 2022, and acted *ultra vires* on 17 June 2022 in taking action to prevent the march. This declaration is issued pursuant to the prayer in para. 60.14 of the statement of claim for such other relief deemed appropriate and just by this Honourable Court.

[74] I do hereby repeat that I am grateful to counsel on both sides for agreeing that nominal damages of RM1 be awarded to the first plaintiff. By reason of my findings that I have explained above, the other prayers in the statement of claim are dismissed. Lastly, since this is a public interest case, and the plaintiffs have succeeded only in part, each party is to bear own costs.